

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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In the Matter of

Deferral of Licensing of MTA Commercial
Broadband PCS Licensing

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PP Docket No. 93-253

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

TO: The Commission

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**PCS PRIMECO, L.P. OPPOSITION TO
EMERGENCY MOTION TO DEFER MTA PCS LICENSING**

PCS PRIMECO, L.P. ("PRIMECO")¹ hereby opposes the Emergency Motion to Defer MTA PCS Licensing ("Motion") filed by Communications One, Inc. ("COI") on March 8, 1995. For the reasons stated herein, COI's deferral request should be denied.

INTRODUCTION/STATEMENT OF INTEREST

As a result of negotiations conducted over the past several months, PRIMECO fully intends to be a party to one or more C Block broadband PCS license applications through its participation in partnerships or joint ventures controlled by designated entities ("DEs"). PRIMECO is therefore keenly interested in having the C Block auction conducted at the earliest possible date. While PRIMECO and its DE partners/venturers would be adversely affected if licensing of the C Block PCS systems is unduly delayed, PRIMECO submits that COI's claims of competitive harm are far

¹ PRIMECO is a limited partnership comprised of PCSCO Partnership (owned by NYNEX PCS, Inc. and Bell Atlantic Personal Communications, Inc.) and PCS Nucleus, L.P. (owned by AirTouch Communications, Inc. and U S WEST, Inc.). PRIMECO was the winning bidder for 11 markets in the Block A/B PCS auction.

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outweighed by important, countervailing interests: namely, the public benefits to be derived from the prompt deployment of PCS services, as mandated by Congress. Accordingly, the COI Motion to defer should be denied, and the Commission should proceed with expeditious processing of the A and B Block license grants.

DISCUSSION

At the outset, PRIMECO notes that COI's Motion is untimely insofar as it challenges the Commission's settled decision to conduct PCS auctions on a staggered basis. The Commission adopted this staggered licensing auction scheme fully recognizing that later auction participants might be adversely effected by the initial deployment of the MTA PCS systems. Nonetheless, the Commission determined that rapid deployment of PCS services was more important and that its present sequencing of licenses was the most administratively effective method of achieving this result.² COI's untimely request for reconsideration of the Commission's sequencing decision should not be entertained under the guise of an "emergency motion".

At the heart of COI's Motion is the contention that A and B Block licensees will have an "unfair headstart advantage" unless the processing of their licenses is deferred until after the C Block auction has been conducted.³ PRIMECO

² Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fourth Memorandum Opinion and Order, 9 FCC Rcd. 6858, 6864 (1994).

³ Motion at 3. Indeed, COI seeks further delay by asking that all broadband PCS licenses in any market area -- including, presumably, the D, E and F Blocks -- be awarded simultaneously. Based on current estimates, delays of a year or more would result if PCS licensing were deferred until all broadband auctions were completed.

submits that this parochial competitive concern is far outweighed by the public benefits that will be realized through prompt introduction of PCS service to the public.

First, the Commission has for good reason expressly rejected "headstart" arguments in the CMRS context. When the Commission adopted its cellular rules, for example, it considered the possibility that the second licensee might suffer adverse economic impact due to the purported wireline "headstart" granted to wireline licensees. However, upon balancing the benefit to the public of early introduction of service with the possibility of economic harm to the later entrant, the Commission concluded that the public would generally best be served by allowing service to commence.⁴

The same rationale applies in the PCS context with even greater force. Indeed, grant of the COI Motion and deferral of the MTA licensing process would conflict with an express Congressional and Commission objective in allocating spectrum and licensing new PCS services; namely, the prompt introduction of new wireless services to the public.

In developing competitive bidding methodologies for the various services, Congress required the Commission to ensure "the development and rapid deployment of

⁴ Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, Report and Order, 86 FCC 2d 469, 491 n.57 (1981), recon., 89 FCC 2d 58 (1982) ("Cellular Reconsideration"). The Commission established one limited exception to this policy -- it agreed to consider requests for a brief (6-month maximum) moratorium on wireline cellular service if a non-wireline applicant could "demonstrate that permitting . . . early entry [was not] . . . in the public interest." *Id.* Numerous headstart petitions were filed, but the Commission found that none met the necessary burden. See Amendment of Part 22 of the Commission's Rules to Provide For Filing and Processing of Applications For Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, First Report and Order and Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd. 6185, 6226 (1991).

new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays."⁵ Congress similarly directed the Commission to prescribe regulations that would promote "investment in and rapid deployment of new technologies and services."⁶ These objectives were further underscored in Congress' establishment of an accelerated schedule for the adoption of PCS rules and the issuance of PCS licenses and permits.⁷ Clearly, deferring the issuance of PCS licenses for up to a year or more, as COI requests, would be flatly inconsistent with these Congressional directives.

The Commission has likewise recognized the importance of expediting PCS service to the public,⁸ and has worked diligently to meet the stringent deadlines imposed by Congress. It noted, for example, that "[r]apid deployment is important so that consumers do not have to wait for the benefits of the new services,"⁹ and it adopted

⁵ 47 U.S.C. § 309(j)(3)(A), as amended by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (1993)("Budget Act").

⁶ § 309(j)(4)(C)(iii).

⁷ Specifically, pursuant to Section 309, the Commission was required to issue a final report and order in the PCS proceeding (Gen. Docket No. 90-314) within 180 days after the Budget Act's enactment, and it was to "commence issuing licenses and permits in the personal communications service" within 270 days of the date of enactment. Budget Act § 6002(d)(2).

⁸ In this regard, the Commission made specific reference to the policies set out by Congress. See Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion and Order, 9 FCC Rcd. 4957, 4966 (1994)("Section 309(j). . . establishes objectives for the bidding process, including rapid deployment of new technologies").

⁹ Id. at 4960.

measures to simplify the microwave relocation process to "allow more rapid introduction of service" ¹⁰

The Commission has also acknowledged a separate public benefit derived from the prompt deployment of PCS services -- introducing competition to existing cellular services "thereby yielding lower prices for existing users of those services" . ¹¹

As noted by Commissioner Barrett:

The three 30 MHz allocations, two at the MTA level and one at the BTA level will provide significant opportunities for new entrants to compete against cellular providers and the emerging Enhanced Specialized Mobile Services [ESMR] market. This new framework achieves one of my policy goals of ensuring that at least 3 new PCS providers have a real opportunity to offer competitive alternatives to existing cellular players. . . . Clearly, time to market will be critical for PCS to compete against the headstart of existing cellular and ESMR players. Our decision today will permit the rapid deployment of PCS services. ¹²

Grant of COI's Motion would significantly delay these policy objectives.

In short, enormous public benefits will be lost if the COI deferral request is granted. Pointing to comments submitted by various parties, the Commission recently

¹⁰ Id.

¹¹ Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, 8 FCC Rcd. 7700, 7710 (1993); See also id. at 7709 ("PCS could provide competition to existing mobile services, including cellular, paging and private radio services.") ("Second Report and Order"); Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd. 4957, 4974 (1994) ("Time to market [for equipment] is a critical factor in the rollout of PCS services that will compete against existing cellular and enhanced specialized mobile radio (ESMR) entities.").

¹² Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd. 4957, 5091 (1994) (separate statement of Commissioner Andrew C. Barrett)(emphasis added).

observed that "the PCS industry will create hundreds of thousands of new jobs for our economy, save consumers billions of dollars by providing competition to the cellular service, enhance productivity, and provide the United States with an unparalleled opportunity to lead the world in a \$195 billion international industry."¹³ Grant of COI's Motion would severely undermine these important public benefits.

CONCLUSION

PRIMECO is committed to the DE concept and it urges the Commission to take all reasonable steps to accelerate initiation of the C Block auction. As discussed above, however, the public benefits that will be realized from the prompt introduction of

¹³ Second Report and Order, supra, at 7710.

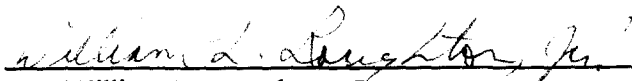
MTA PCS service clearly outweigh any potential harms to Block C applicants that may result if A and B Block licenses are processed on schedule.¹⁴ Accordingly, the COI Motion to defer should be denied.¹⁵

Respectfully submitted,

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¹⁴ PRIMECO notes, moreover, that the A/B Block licensing process is already underway with the grant of the three PCS broadband pioneer's preference licenses to Onmipoint Corp., Cox Communications, Inc. and American Personal Communications, L.P. The process should not be derailed at this point in time.

¹⁵ At a minimum, it is essential that the Commission expeditiously resolve the issues raised in the Motion so as to minimize the uncertainty which the industry now faces. Earlier this week, PRIMECO submitted in excess of \$166 million to the Commission as downpayment for the licenses it acquired in the A and B Block auction. (This sum was in addition to the \$54,666,431 submitted previously as an upfront payment.) Should the Commission defer licensing of the A and B Blocks, as requested by COI, it should return PRIMECO's downpayment until such time as it resumes MTA licensing efforts. In this regard, PRIMECO has submitted a letter to Chairman Hundt requesting expeditious action on the COI Motion.

CERTIFICATE OF SERVICE

I, Donna L. McClain, hereby certify that I have this 24th day of March, 1995, caused copies of the foregoing PCS PRIMECO, L.P. Opposition to Emergency Motion to Defer MTA PCS Licensing to be delivered by hand delivery to the following:

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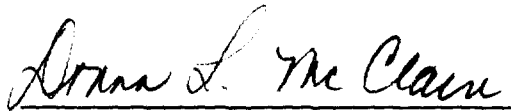
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